

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JAY DEES, INC., PHILLIP MARKS, and  
STEPHEN KEVELSON,

Plaintiffs,

v.

DEFENSE TECHNOLOGY SYSTEMS,  
INC., JOHN BRADY, EDWARD McPHEE,  
AND DANIEL McPHEE,

Defendants and  
Third-Party Plaintiffs,

v.

JOHN SCOTTO,

Third-Party Defendant.

C05-6954 SAS(TSZ)

MINUTE ORDER

Having conducted a status conference on March 11, 2009, at which (i) Steven Legum, counsel for plaintiffs Jay Dees, Inc., Phillip Marks, and Stephen Kevelson, (ii) Eric Hutner and Mitchell Green, counsel for defendant John Brady, (iii) pro se defendant Edward McPhee, (iv) pro se defendant Daniel McPhee, and (v) third-party defendant John Scotto appeared telephonically, the Court now enters the following Minute Order:

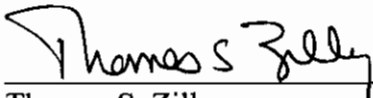
(1) John Scotto intends to retain or has retained Richard Ciacci as counsel. According to Mr. Scotto, Mr. Ciacci was aware of the above-referenced status conference, but he did not participate, and Mr. Scotto indicated his willingness to proceed in Mr. Ciacci's absence. Mr. Legum is directed to confer with Mr. Ciacci concerning any conflict of interest that might prevent Mr. Ciacci from representing Mr. Scotto. Counsel shall contact the Court's law clerk by March 17, 2009, to report on the status of Mr. Scotto's representation by counsel.

(2) If Mr. Ciacci intends to represent Mr. Scotto, he shall file a Notice of Appearance within seven (7) days of the date of this Minute Order.

1 (3) Pursuant to the agreement of counsel and all parties participating in the status  
2 conference, the Court will consider the Third Amended Complaint, docket no. 88, to be the  
3 operative complaint in this matter. In addition, the Court will deem the Answers to the  
4 Second Amended Complaint, and the Counterclaims and Cross-Claims contained therein,<sup>1</sup>  
5 docket nos. 31, 47, 53, to be responsive to the Third Amended Complaint. Any allegations  
6 contained in the Third Amended Complaint that are not stated in the Second Amended  
7 Complaint are hereby deemed denied. Defendants may file supplemental answers to the  
8 Third Amended Complaint, but such supplemental answers shall not contain any new  
9 substantive claims, counterclaims, or cross-claims. Such supplemental answers shall be filed  
10 by March 20, 2009.

11 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of  
12 record.

13 Filed and entered this 11th day of March, 2009.

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Thomas S. Zilly  
United States District Judge

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<sup>1</sup> Paragraph 5 of the Minute Order dated March 3, 2009, docket no. 150, which reflected the Court's understanding based on the representations of counsel that the only counterclaims in this case were those of the unrepresented corporate defendant and that no issues of indemnity or contribution exist, is hereby modified to indicate the Court's revised understanding that the individual defendants have pending counterclaims against third-party defendant John Scotto, for indemnification and contribution, and that John Brady and Daniel McPhee have pending cross-claims against each another.